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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,522	11/12/2003	Richard Kingsley Stuart JR.	80050 US02	7693

7590

12/20/2005

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EXAMINER
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SZEKELY, PETER A

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/706,522

**Applicant(s)**

STUART ET AL.

**Examiner**

Peter Szekely

**Art Unit**

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16-43 is/are rejected.
- 7) ☒ Claim(s) 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/12/03, 3/1/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claims 2, 13, 14, 16, 17, 22 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 3, 13, 14 and 29 contain improper Markush language. Claim 14 also contains the indefinite phrase "and derivatives thereof. Carbon dioxide is a derivative of the claimed polymers. It is derived by burning. Claims 16 are rendered indefinite by the phrase "less than about". It has to be either "less than" or "about". See *Amgen, Inc. v. Chubai Pharmaceutical Co., Ltd.*, 18 USPQ2d 1016 (Fed. Cir. 1991). Claim 22 does not make sense. Applicants did not disclose a mixed midblock. The conjunction should be "or".

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Leonardi 4,719,039.

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6. Leonardi discloses polyethylene and crosslinking agent in the form of pellets in claim 9. The intended use has no patentable significance. Applicants' claims are not novel.

7. Claims 4-14 and 16-43 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bohm et al. 4,385,142, Maillet et al. 5,708,062 or Planche et al. 6,011,094, in view of Liang et al. 6,100,317 or Andriolo 6,872,763.

8. Bohm et al. teach olefin polymer, bitumen, SBR and crosslinking in claim 1, sulfur cure in claim 7 and crosslinkers from column 7, line 31 through in column 8, line 15. Maillet et al. reveal bitumen and plastomers in claim 1, elastomer and EVA in claim 7, SBS block copolymer in claim 8 and tetra-sec-butyl titanate in column 4, line 7. Planche et al. display plastomers and sulfur in claims 1-4, block copolymer of styrene and a conjugated diene in claims 12-14 and crosslinkers in claim 15. For styrene content and molecular weight see the paragraph overlapping columns 5 and 6. Liang et al. divulge bitumen, polyolefin, styrenic polymer and crosslinking in claim 1, block copolymers in claim 3, EVA and polypropylene in claim 4 and aggregate in column 5, lines 28-30. Andriolo presents a pelletized vulcanizing agent in claim 15, a plastomer binder in claim 16 and bitumen with elastomer in claim 1. All properties are inherent in the composition. Applicants' claims are not novel. In the alternative, it would have been obvious to one having ordinary skill in the art; at the time the invention was made, to add the aggregate of Liang et al. to the composition of the primary references, since

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aggregates are routinely part of asphalt cements and to modify the pellet of Andriolo to contain an elastomer too, to make it more resistant to cracking.

***Allowable Subject Matter***

9. Claim 15 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Szekely whose telephone number is (571) 272-1124. The examiner can normally be reached on 7:00 a.m.-5:30 p.m. Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Peter Szekely  
Primary Examiner  
Art Unit 1714

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